

**OVERVIEW AND SCRUTINY  
7 JUNE 2016**

**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**12**

**TITLE OF REPORT: PROCUREMENT OF WASTE AND STREET CLEANSING CONTRACT**

REPORT OF THE HEAD OF LEISURE AND ENVIRONMENTAL SERVICES

EXECUTIVE MEMBER FOR WASTE MANAGEMENT, RECYCLING AND ENVIRONMENT

**1. SUMMARY**

- 1.1 The current waste and cleansing contract terminates on 08 May 2018, after extension under a Voluntary Ex-Ante Transparency (VEAT) notice. (see Cabinet report 16 June 2015). The contract includes the collection of all domestic waste from households within the district along with street cleansing, litter bin servicing, graffiti removal and other related services. The anticipated value of the contract is above the threshold for goods and services, referred to in the Public Contracts Regulations 2015. In order for the Council to be legally compliant, not at risk of challenge and to ensure bidders have sufficient time to implement the requirements of a contract the formal procurement process must begin in September 2016.
- 1.2 In commencing the external procurement process it is proposed that a new waste and cleansing contract is procured by the Open process and that the contract should run for an initial period of 7 (seven) years with an ability to extend, for a further 7 years.
- 1.3 The report outlines that the specification documents for each of the contract lots will be based upon the current service but highlights some key changes. These reflect the work done by the Waste Management Team in determining options most likely to achieve value for money whilst maintaining existing service standards.
- 1.4 The priority is to consider the efficiencies that can be delivered to support the Council's Medium Term Financial Strategy (MTFS), whilst meeting current and future performance targets that will be required by Government.
- 1.5 Recommendations approved as part of this report will stand independently or support any future decision to work with East Hertfordshire District Council.

**2. RECOMMENDATIONS**

That Cabinet agrees:-

- 2.1 the outline scope for the waste and street cleansing contract; as described in Section 7 of this report.

- 2.2 that any changes considered necessary to the outline scope as agreed are delegated to the Head of Leisure and Environment in consultation with the Executive Member for Waste Management, Recycling and Environment.
- 2.3 That the Service Manager for Waste & Recycling develops a detailed specification and evaluation criteria for the waste and street cleansing contract in consultation with a Project Board.

### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 To allow for the development of the technical specifications for the waste and street cleansing contract, to progress to procurement in September 2016. This will allow for a contract award in Spring 2017 giving the chosen contractor a year to implement the contract before a contract start in May 2018.

### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Separate contracts for waste and street cleansing were considered, this would allow for separate contractors for each area of work however it is anticipated that greater value for money can be achieved by combining these services in one contract, through economies of scale.
- 4.2 The option to bring services back in-house was considered however this could add additional risk for North Hertfordshire District Council, in particular obtaining and operating suitable sites in the short time frames available. This would also further complicate matters if joint working with EHC was approved
- 4.3 The use of a Teckal exemption in the formation of a Teckal company was considered. In simple terms, this allows for contracting authorities such as North Hertfordshire District Council to award a contract to a company when the contracting authority has control over that company and the company performs services predominantly associated with the work of the contracting authority. As NHDC do not operate in house services in was not considered necessary or appropriate to consider a business case for this at this time.
- 4.4 The use of the 'Competitive Dialogue' procurement process was considered, but may only be used for awarding "particularly complex contracts", where the contracting authority is not objectively able to determine what the market can offer to satisfy its needs. Due to the short timeframes available it was considered that the open process would be sufficient.

### **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1 A briefing for members was held on 11<sup>th</sup> May 2016 (see background papers) and two further drop in sessions were held on 17<sup>th</sup> and 19<sup>th</sup> May 2016.
- 5.2 Members were provided with an overview of the existing Waste, Recycling and Streets service, comparison of Councils performance against other similar Councils and the legislative requirements on Council to provide services. Information was provided detailed the service improvements that had been considered by officers and subsequently dismissed and those which would be proposed in the service specification development.

- 5.3 Further consultation with external stakeholders will be undertaken during the specification development.

## **6. FORWARD PLAN**

- 6.1 This item was first notified to the forward plan on the 13 May 2016.

## **7. BACKGROUND, OUTLINE SCOPE AND SERVICE OPTIONS**

- 7.1 The current waste and cleansing contract terminates on 08 May 2018, after extension under a Voluntary Ex-Ante Transparency (VEAT) notice. (see Cabinet report 16 June 2015) The contract includes the collection of all domestic waste from households, street cleansing, street litter bin servicing, graffiti removal and other ancillary services.
- 7.2 The current contract costs the Council circa £6.2 million annually. The current contract was let in 2002 at a time when the financial markets were very different and waste and street cleansing services were operated differently. The market place for waste and street cleansing contracts is not at its most buoyant in the current financial climate and markets for recyclable materials are suppressed.
- 7.3 For a contract of this nature and size, the procurement document preparation must begin immediately in order to secure a service that meets the needs of residents and secures best value for the Council.
- 7.4 The anticipated value of the total contract over the 7 plus 7 year period is significantly above the threshold of £164,176 for goods and services, referred to in the Public Contracts Regulations 2015, and is estimated to be circa £70 million for North Hertfordshire District Council. Contracts with a total contract value in excess of the threshold must be procured in accordance with the Regulations otherwise the Authority may be presented with a legal challenge on the basis of a breach of legislation.
- 7.5 Specification documents, and contract lots, are being developed with the aim of issuing the contract documentation and invitations to tender in September 2016. However, the key points of departure from the current service, and the reasons behind these, are set out in the following paragraphs.
- 7.6 Open-book accounting should be adopted as a general principle in the contract. This would ensure that additional costs arising from, for example, annual increases in population and households are only passed onto the Council once contractors have been able to demonstrate that they have incurred additional expense, for example, from the purchase of a new vehicle and hiring of a new crew. This would provide greater transparency and reduce the risk to the Council of making payments when the contractor has not incurred additional costs. It would also enable the Council to benefit from any unforeseen additional revenue when considered with a contractual mechanism for sharing such income. This approach is consistent with general practice within the industry.
- 7.7 It is proposed that tenders should be invited from suppliers for options to ensure compliance with The Waste (England and Wales) Regulations 2011. This should include options surrounding the use of the kerbside box for either paper or glass as well as an option for a fully commingled collection solution.

- 7.8 It is proposed that the specification documents contain a high-level description of the options and invite contractors to submit detailed method statements to accompany tendered prices.
- 7.9 The impact is yet unclear as to what the different collection systems would have on costs. It is proposed to seek minor options change for the service, to be considered during the procurement stage and the procurement will be constructed to demonstrate which approach provides better value for money. The Council's approach to seeking tenders for alternative collection methods is designed to help mitigate the risks of failing to ensure adequate quality recyclables for the reprocessing market.
- 7.10 The waste hierarchy has been enshrined in UK law as a "priority order" for waste management activities and so the Council is now under an obligation to take all reasonable measures available to apply the waste hierarchy to the waste that it collects. As such the Council should place a greater emphasis on ensuring more of the waste collected is diverted for re-use and recycling. The European Commission is also seeking to impose higher recycling targets with, 70% of all Municipal Waste (as opposed to Household waste which is a subset of Municipal Waste) to be recycled by 2030 as the anticipated new target. The latter part of this contract may therefore see an increased pressure to improve recycling beyond the current scheme, but this is not envisaged for the first seven years of the 7 +7 year contract period.
- 7.11 One area of the collections which could improve is reuse in North Hertfordshire is bulky waste collections. Waste collected as part of the bulky waste service is currently disposed of through the residual waste stream. This is in part due to limitations of available transfer facilities but also due to the collection methodology employed in the current contract. It is therefore proposed that an option in the Contract exists for collections which facilitate bulky waste reuse; albeit that disposal remains the responsibility of Hertfordshire County Council.
- 7.12 A new performance monitoring regime is proposed, with elements prescribed by the Council as part of the tender requirements yet allowing for 'bidder' proposed KPI's to allow for bidder innovation, in areas for example such as customer satisfaction or recyclable material quality.
- 7.13 In order to ensure that bidders can ensure operational efficiency and consequently cost services competitively it is proposed to un-restrict certain service standards to ensure best value can be obtained for the Council. This may include collection day changes for some residents, and may also include collection time changes. Collection of missed recycling bins will no longer be required on the same day to ensure time is available to any contractor to check whether bins were reported as contaminated at the time of collection.
- 7.14 Responsibility would remain with the Council for communications and for working with residents on reducing the amount of waste they generate and to encourage them to re-use and recycle as much as possible. The Council has a good track record on communications. This approach would ensure consistency with the Hertfordshire Waste Partnership, which would be particularly important in the case of multiple contractors. It would be difficult to foresee the resource requirements for the communications associated with a potential service change. As such, it would be difficult for contractors to price at the time of tender. Scope will be available within the Contract for bidders to propose 'added value' communication services supporting the Council led communications by tapping into their corporate communication campaigns.

- 7.15 Additional requirements from the contract will include the requirement to separate out recycling from collected street litter and implement further on street recycling facilities.
- 7.16 The current contract includes the provision of a helpdesk and associated administrative infrastructure. This arrangement has meant that little change or innovation in customer relationship management has been possible and that there has been a consistent lack of investment. Work is currently underway to ensure a basic IT infrastructure is present for the next few years preceding the new Contract and the proposal is for separate work to be undertaken to bring the call handling and administration for the contract back in-house. This will ensure a more auditable approach to waste data is possible and allow for improvements in the customer experience. Bidders will be required in their tender submissions to ensure that in-cab' technology is resourced and consequently provides real time information to the Councils back office.
- 7.17 In 2013 the Department for Communities and Local Government provided a £853k grant for the introduction of weekly collection of residual waste and food waste for flats, with the condition that this service provision is maintained for a minimum of five years. The intention however is to provide consistent service provision across the district wherever possible and, with the grant condition close to expiry at the time the new contract commences, it is proposed to move flats onto fortnightly collections where possible, it is anticipated that this will not affect the performance of the service and have no negative impact on the customers. Retaining biodegrade food waste bags for flats could be an option for consideration to continue encouraging separate food waste participation in flats.
- 7.18 The vehicle assets required for the contract are currently funded and procured by the Contractor as part of the existing contract. It is proposed to have an option within the new contract for North Hertfordshire District Council to fund the vehicles in a Capital financing arrangement. This may assist in keeping revenue spend lower for a new contract. £3.66 million has been agreed by the Capital programme for this if the option is proven to be the most financially advantageous.
- 7.19 The street cleansing elements of the contract scope and specification will be reviewed with the aim of providing the most value for money services without compromising on the current standards seen within the district.
- 7.20 The current street cleansing specification is 'output' based, i.e. states the desired service and performance, not how the service should be delivered. Delivering an 'input' based specification which is driven by schedules, after a service has operated an 'output' based specification can add additional risk when custom and practice and current schedules are flexible and based on operative knowledge. Therefore for North Hertfordshire District Council remaining on an 'output' based system is likely to provide a more cost effective service than a specification which is more 'input' based. However in negotiating changes with East Hertfordshire District Council for any joint procurement exercise all options will be considered.
- 7.21 The specification will be split into core and optional or provisional items with the evaluation of the bids focusing on the core elements of the service provision. Members will have an opportunity to consider the financial viability of the optional lots with no obligation to undertake this service provision. The aim of the procurement is to appoint one Contractor to perform all services.

- 7.22 Onward sale and reprocessing of recycling is currently managed through separate contracts. There are mixed views from the market regarding the inclusion of this element alongside a collection contract, which is considered to suit traditional waste management companies more than companies focusing on service provision. It is therefore proposed to consider this as an option only to ensure that this option does not impact on the quality and price evaluation of the core contract.
- 7.23 It is also proposed to indicate to bidders that a weekly collection of food waste and charging for garden waste may be considered at the break point in the contract should the financial position of the Council require this level of service change and when a new contract for organic waste disposal is being negotiated.

## **WASTE MANAGEMENT**

- 7.24 The collection of household residual waste will be scheduled fortnightly for the same day of the week but on the opposite week to Recyclable and Organic Waste collections.
- 7.25 The collection of household recyclable waste will be scheduled fortnightly for the same day of the week and on the same day as organic waste but on the opposite week to residual waste collections.
- 7.26 The collection of household organic waste will be scheduled fortnightly for the same day of the week and on the same day as recyclable waste but on the opposite week to residual waste collections.
- 7.27 The collection of household clinical waste will be scheduled weekly, fortnightly, monthly or less frequently as required and requested by a healthcare professional.
- 7.28 The collection of Household Bulky Waste will be scheduled on an as required basis. Items for collection will be limited as prescribed by Council Policy and as prescribed by The Controlled Waste (England and Wales) Regulations 2012 and defined as 'Household waste for which collection and disposal charges may be made'.
- 7.29 The collection of commercial residual waste and chargeable household residual Waste will be scheduled on an as required basis. Items for collection will be limited to those contained within prescribed receptacles.
- 7.30 The collection of commercial recyclable waste and chargeable household recyclable waste will be scheduled on an as required basis. Items for collection will be limited to those contained within prescribed receptacles.
- 7.31 The contractor shall organise his workforce and plant to manage the stock and delivery of waste and recycling receptacles to residential and business premises.
- 7.32 The contractor shall organise his workforce and plant to manage and operate transfer and bulking facilities for household and commercial recyclable waste.
- 7.33 The contractor shall provide options for a collection of household recyclable small waste electrical and electronic equipment (WEEE) and batteries from all domestic properties.

## **STREET CLEANSING**

- 7.34 Street cleansing of town centre areas to maintain Grade A standard though out the day.
- 7.35 Street cleansing of areas zoned in accordance with the Code of Practice for Litter and Refuse.
- 7.36 Road channel cleansing schedules to prevent standards falling below a Grade B.
- 7.37 Street litter picking operations to prevent standards falling below a Grade B, including the segregation of recyclable litter.
- 7.38 The emptying of litter bins and on-street recycling bins will be undertaken by the contractor on a frequency as agreed with the contract manager and to ensure they remain with usable capacity at all times.
- 7.39 Graffiti removal from Council property and other graffiti removal services on a request basis.
- 7.40 A programme for autumn leaf fall clearance to prevent their compaction and the build up of detritus.
- 7.41 Cleansing of hard landscaped areas and pavements by washing to remove stains, chewing gum and other contaminants on a request basis.
- 7.42 Litter picking or cleansing of Council owned public car parks.
- 7.43 Collection of fly-tipped waste, including reporting requirements for waste data flow.
- 7.44 The timeline for the procurement process is anticipated to be:-

September 2016 - Advert Placed – Official Journal of the European Union and the UK Government’s Contract Finder

September 2016 – Invitation to Tender Issued

October 2016 - Bidders Open Day

February 2016 - Tenders returned and evaluated

May 2017 - Cabinet decision to appoint contractor

May 2017 - Standstill Period

May 2017 - Contract Award

June 2017 to May 2018 - Contract Mobilisation

## **8. ISSUES**

- 8.1 Developing a suitable specification for the Councils needs is resource intensive and due to the age of the existing contract, utilisation of the existing contract will not provide the best value services or best working practices.

- 8.2 The development of the specification is dependent on negotiations with East Hertfordshire District Council regarding the development of a shared service and shared contract. Delays to decision making will impact on the development time available for the specification.
- 8.3 Additional negotiating time will be required for any joint specification development.
- 8.4 The open and restricted procurement processes do not allow for innovation or change from the specification drafted. Members will therefore be restricted in the options available as part of the tender process.
- 8.5 Market knowledge indicates that there are numerous similar procurements taking place over the next year and that therefore there is a risk that bidders will be prioritising bidding. This will mean the contract must be perceived as attractive to receive the bids.
- 8.6 Soft market testing indicates that bidders have a preference for Councils to provide depot and transfer facilities rather than there be a requirement to provide these as part of the contract. This is a significant risk for North Hertfordshire District Council and therefore discussions continue to provide some asset surety for bidders in advance of the Invitation to Tender process.

## **9. LEGAL IMPLICATIONS**

- 9.1 The Executive Member for Waste Management, Recycling and Environment is responsible for the proper administration of the Council's services under section 14.8.1 of the Council's Constitution. Given the significance of this Contract, the Executive Member considers that it is appropriate for the Council's Executive to agree the contract scope in order to ensure the proper administration of the Council's Services in respect of this contract.
- 9.2 The EU revised Waste Framework Directive and The Waste (England and Wales) (Amendment) Regulations 2012 include a requirement by 2015 to maintain separate collections of at least the following materials from the household waste stream: paper, metal, plastic and glass.
- 9.3 The Waste (England and Wales) (Amendment) Regulations 2012 which transposed the requirements of the revised Waste Framework Directive also include a requirement that from 1 January 2015 an establishment or undertaking which collects waste paper, metal, plastic or glass must do so by way of separate collection. These requirements apply where separate collection:
  - (a) is necessary, in effect, to provide high quality recyclates; and
  - (b) is technically, environmentally and economically practicable.Where waste paper, metal, plastic or glass has been collected separately all reasonable steps must be taken to keep that stream separate from other waste streams wherever this is necessary to provide high quality recyclates.
- 9.4 It is therefore necessary for bidders to demonstrate that they are able to meet these legislative requirements on our behalf when proposing services.
- 9.5 Failure to procure these services would impact on the Council's ability to comply with its statutory duties as a Waste Collection Authority.



- 9.6 The anticipated value of the total contract over the 7 year plus 7 year period is significantly above the threshold of £164,176 for goods and services, referred to in the Public Contracts Regulations 2015. Contracts with a total contract value in excess of the threshold must be procured in accordance with the Regulations and the Council Contract Procurement Rules, otherwise the Authority may be presented with a legal challenge on the basis of a breach of legislation.
- 9.7 Contracts over £10,000 must be in a form approved by the Corporate Legal Manager.
- 9.8 Legal advice will be sought at each stage of the procurement process to account for compliance with existing and (where possible) future legislative requirements for a contract of this nature.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The balance between quality and price evaluation at tender is important to ensure the procurement of both value for money services, and services which maintain a high standard.
- 10.2 The original budget for financial year 2016/17, approved in February 2016 has provision of £6.224m for the current contract costs of the Waste and Street Cleansing services, a total which includes the cost of commercial waste and recycling collections and client team operations. Officers are seeking submissions from bidders which reduce annual spend but Members should consider that due to the age of the current contract, that contract prices may vary significantly from those of the existing contract. It is therefore proposed to, where possible, allow some elements of services to be options that can be bought from the contract, either as required or when finances allow for additional service standards to be maintained.
- 10.3 It is also proposed for the Council to facilitate services for interested stakeholders to be able to have, for example enhanced street cleansing for events and additional services such as street washing or chewing gum removal, which can be facilitated at no additional cost to North Hertfordshire District Council.

## **11. RISK IMPLICATIONS**

- 11.1 Any procurement faces risks from delivering on time to cost and quality. This procurement must follow the timeline set out in 7.44. If the decision is not taken there would be delays to the procurement process which could impact on service delivery from 08 May 2016. The Public Contracts Regulations 2015 have minimum timeframes for procurement and should procurement be delayed this could open the Council up to legal challenge.
- 11.2 The quality of the service is very important to the North Hertfordshire residents in this highly visible contract. In addition, there is a risk of challenge to the Council should the decision be taken to change the collection system for recyclable materials or fully commingle recyclable materials without full consideration of the legislative requirements to collect waste separately as set out by the Waste (England and Wales) Regulations 2011. The approach outlined for inviting tenders for varying models should minimise this risk.

- 11.3 If the wrong procurement procedure is used, the contracting authority is at risk of:
- a) an automatic suspension of the conclusion of the procurement
  - b) being ordered to restart its procurement process, or to re-run a particular part of it.
  - c) potentially, having to pay damages to any bidders caused loss by the authorities' choice of procedure or the order to restart the process.
- 11.4 Provided that the Council complies with the mandatory standstill process, the risk of having a contract declared ineffective through the choice of the wrong procedure adversely affecting the chances of a bidder is reduced. It should be noted that there is no point at which a contracting authority will be free of the threat of action, as the European Commission have the ability to instigate a challenge to the procurement procedure even after the limitation period for aggrieved bidders has expired.
- 11.5. Although there is an aim to reduce spend on the contract this will depend on the specification and determining if this is to be a joint procurement with East Herts Council. The volatility in obtaining income from the sale of recyclables which is outside the control of the Council has an impact on the cost of this service.
- 11.6 A contract risk register will be maintained during all stages of the procurement to assist in mitigating and managing the risks.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 All existing services for residents which require assistance will continue as part of any new contract.
- 12.4 It is not anticipated that any of the proposed changes will have equalities implications.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 As the recommendations made in this report constitute a public service contract, above the relevant EU threshold, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need to be applied.
- 13.2 Procurement of contracts of this size presents a significant opportunity for innovation in the social value elements of a contract. A section on social value will be included in the invitation to tender and will be evaluated as part of the quality submission.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 Additional resource has already been allocated in a Project Manager to assist in the procurement process.
- 14.2 Staff shortage in the waste management team will continue to impact on the progress and development of the specification and data gathering exercises. Temporary staff and consultancy is therefore being considered.

## **15. APPENDICES**

- 15.1 None

## **16. CONTACT OFFICERS**

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**17. BACKGROUND PAPERS**

Presentation for Members – 11<sup>th</sup> May 2016  
Questions from Member following presentation  
Code of Practice for Litter and Refuse